

clared that the defendant "is entitled to . . . a lien upon the lands . . . for the amount of the purchase money paid by him . . . and interest . . . and for taxes and statute labour paid or performed by him and for the value of any improvements made by the defendant upon the said lands . . . before this action was commenced and for the costs of his counterclaim . . . after deducting . . . the rents and profits received . . . or which might have been received" And it is referred to the Master at North Bay to determine the amount, leaving the costs of the reference in the discretion of the Master. The plaintiffs contend that this is not justified by the law.

The judgment is said to be based on the Act of 1904, 4 Edw. VII, ch. 23, sec. 176(1), considered in *Sutherland v. Sutherland*, 22 O. W. R. 299; but this Act did not come into force till 1st January, 1905. See sec. 229. And this is not a mere matter of procedure or practice, but of substantive rights. I, therefore, think the statute is not retroactive.

We must see how the law stood when the rights of the plaintiffs accrued, which may for the purposes of this action be considered as 1901 or 1902, at any rate, before January, 1905. The statute then in force was R. S. O. (1897), ch. 224, sec. 212, but that applies only when the sale "is invalid by reason of uncertain and insufficient designation or description"—which is not the case here. We may, however, apply the statute R. S. O. (1897), ch. 119, sec. 30, if necessary. This comes from (1897), 36 Vict., ch. 22, sec. 1.

"In every case in which any person has made or may make lasting improvements in any land under the belief that the land was his own, he or his assigns shall be entitled to a lien upon the same to the extent of the amount by which the value of such land is enhanced by such improvements"

This statute very much extends the application of the principle of remuneration by the true owner of the land to one who under a mistake of title has made permanent improvements upon it—the former Act going as far back as 1819, 59 Geo. III., ch 14, by sec. 3 providing for the case of mistake in boundaries occasioned by unskilful surveys, which were by no means uncommon in those days of dense forest, deep morasses and cheap whiskey. This statute is in substance repeated as R. S. O. (1897), ch. 119, sec. 31.